

## REMARKS

### Status of the Application

Claims 1-5 were pending in the application at the time the Office Action was mailed. Claims 1-5 were rejected. No claims were allowed. By this amendment, claim 1 has been amended and no new claims have been added. Therefore, claims 1-5 as amended are before the examiner for consideration.

### Claim Objection

Claim 1 was objected to because of an informality. Specifically, the Office Action indicated that claim 1, line 5, recites “potion” when it should recite “portion.” Claim 1 has been amended to correct this informality. Thus, withdrawal of this objection is requested.

### Rejections Under 35 U.S.C. 112

Claims 1-5 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the Office Action stated that:

Claim 1, line 5, “having a bottom lips” is vague and indefinite. Applicant has a single lip on each end and not plural. Thus “lips” should be corrected to “lip”.

Accordingly, claim 1 has been amended to recite “lip” instead of “lips” in claim 1, line 5.

### Rejections Under 35 U.S.C. 102

Claims 1 and 3 were rejected under 35 U.S.C. 102(b) as being anticipated by

Smith (US Patent No. 3,151,793). In particular, the Office Action states that:

Smith discloses a holder inherently capable of being a condiment container holder comprising a plurality of walls (12 and 13) each walls having a top lip (bend portion at top edge of wall 20, figure 4) on an upper portion thereof for retaining container (18), a bottom (11, figure 2) engaged to plurality of walls, the bottom having a bottom lip (16 and 17) on each end portion thereof and the bottom having a condiment well (26) formed therein inherently capable of receiving liquid condiment.

This rejection is incorrect because Smith does not teach a container having walls with lips on their upper portions or a bottom having lips on each end. Independent claim 1 recites “walls having a top lip on an upper portion thereof” and a “bottom having a bottom lip on each end portion thereof.” Although Smith describes a holder having four walls for dispensing metal foil, nowhere does it describe a condiment container holder having a plurality of walls, each having a top lip on its upper portion, as well as a bottom having a lip on each end thereof. Instead, Smith describes a holder having “edges.” Such edges are not suitable for the purposes of preventing a condiment container from escaping upwards or sideways if the condiment container holder is jarred.

Further, Smith fails to disclose a “bottom having a condiment well formed therein,” as recited in claim 1. As described in the specification at page 7, lines 1-2, the condiment well in the preferred embodiment is “formed as a recess in bottom 24” so that “liquid condiments can be adequately contained.” In contrast, the aperture 26 shown in Fig. 3 of Smith is not a recess and is not adequate for containing a liquid. Rather, its purpose is to provide a “passage through which the dispenser can be elevated and removed” (Smith, Col. 2, lines 16-17). Because Smith fails to disclose at least three elements of claims 1 and 3, withdrawal of this rejection is respectfully requested.

Rejection Under 35 U.S.C. 103, Smith in view of Feerick

In the Office Action, claim 2 was rejected under 35 U.S.C. 103(a) as being unpatentable over Smith in view of Feerick (US Patent No. 2,491,652). In particular, the Office Action states:

Smith disclosed all the claimed features of applicant's invention except for a condiment container. Feerick teaches a holder supporting condiment containers (15). It would have been obvious to one of ordinary skill in the art to place condiment containers into the holder of Smith for holding condiments as taught to be desirably by Surber<sup>1</sup>.

This rejection is incorrect because the combination of references does not teach or suggest all the claim limitations present in claim 2. To establish a *prima facie* case of obviousness, the prior art references must teach or suggest all claim limitations. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). Neither reference teaches or suggests a condiment container holder having a "plurality of walls having a top lip on an upper portion thereof," a bottom having "a bottom lip on each end portion thereof," and "a condiment well formed therein" as recited in claim 1 from which claim 2 depends. Further, neither reference teaches or suggests a condiment container holder wherein "said top lips and said bottom lips retain a condiment container" as recited in claim 2.

As the combined teachings of Smith and Feerick do not teach or suggest all of the limitations of claim 2, the cited references do not render the subject matter of claim 2 obvious within the meaning of 35 U.S. C. 103. Accordingly, withdrawal of this rejection is respectfully requested.

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<sup>1</sup> It is presumed that the reference to Surber in the Office Action was erroneous and that the examiner intended to refer to Feerick.

Rejection Under 35 U.S.C. 103, Smith in view of Grondin

Claims 4 and 5 were rejected under 35 U.S.C. 103(a) as being unpatentable over Smith in view of Grondin (US Patent No. 3,168,275). The Office Action further states:

Smith disclosed all the claimed features of applicant's invention except for using adhesive material for mounting to engage the bottom or wall. Smith uses fasteners to mount the holder. However, to substitute mounting fasteners with adhesives are notoriously old and well-known. Such modification has the known advantage of eliminating damage to a wall surface to which the holder is to be mounted. Grondin teaches a holder with walls (20) with lips (24) and bottom (18) engage the walls wherein releasable adhesive material (30, figure 2, 32, figure 3) can engage the bottom (18, figure 2) or the wall (20, figure 3) to alternatively mount the holder under different conditions. It would have been obvious to one of ordinary skilled in the art to substitute the mounting fasteners of Smith with releasable adhesive as taught by Grondin to prevent damage to a wall surface and to provide the adhesive material at either the bottom or wall as taught by Grondin to facilitate alternative mounting under different orientation.

This rejection is incorrect because the combination of references does not teach or suggest all the claim limitations present in claims 4 and 5. Neither reference teaches or suggests a condiment container holder having a bottom having "a bottom lip on each end portion thereof," or "a condiment well formed therein" as recited in claim 1 from which claims 4 and 5 depend. Moreover, the combination of the devices described in Smith and Grondin would result in a holder that was inoperative for the purposes of the presently claimed invention because a device having the end walls (walls 14, Fig. 1) of Smith and the front walls (walls 24, Fig. 1) of Grondin would physically occlude the insertion of a condiment container into the device and further, the device would not have a bottom having a condiment well formed therein.

As the combined teachings of Smith and Grondin do not teach or suggest all the limitations of claims 4 and 5, the cited references do not render the present invention obvious within the meaning of 35 U.S. C. 103. Accordingly, withdrawal of these

rejections is respectfully requested.

Conclusion

The currently pending claims before the examiner are supported throughout the specification and are patentable over the prior art. No new matter has been added. This application is now in full condition for allowance, and such action is respectfully requested.

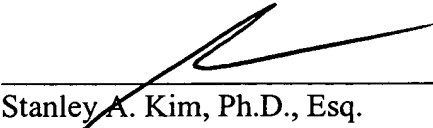
The Commissioner is hereby authorized to charge any underpayment or credit any overpayment of fees under 37 CFR 1.16 or 1.17 as required by this paper to Deposit Account 50-3110.

The examiner is cordially invited to call the undersigned if clarification is needed on any matter within this amendment, or if the examiner believes a telephone interview would expedite the prosecution of the subject application to completion.

Respectfully submitted,

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